4177

BILL NO. S-78-08-30

SPECIAL ORDINANCE NO. S-150-78

AN ORDINANCE approving an amended Agreement with Bus Huts, Inc.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Amended Agreement with Bus Huts, dated August 7, 1978, between the City of Fort Wayne, Indiana by and through its Mayor and the Board of Public Works and Bus Huts, Inc. for:

> the erection on public right-of-way and/or private property, Bus Stop Shelters along street frontage for Bus patrons along with built-in advertisement panels,

of which the developer shall pay the entire cost and expense of the construction of said Bus Stop Shelters, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and upon passage and approval by the Mayor.

William T. Hinga
Councilman

APPROVED AS TO FORM AND LEGALITY,
Larry J. Brown
CITY ATTORNEY

Read the first time in full and on motion by Hinga, seconded by V. Schmidt, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock _____ M., E.S.T.

DATE: 8-22-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Hinga, seconded by V. Schmidt, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9	0			
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 9-12-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (ANNEXATION) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-150-78 on the 12th day of September, 19 78.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of September, 19 78, at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 15th day of September, 19 78, at the hour of 3:30 o'clock P M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-08-30

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance approving an amended Agreement with Bus Huts, Inc.

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

WILLIAM T. HINGA - CHAIRMAN — William T. Hinga

VIVIAN G. SCHMIDT - VICE CHAIRMAN — Vivian G. Schmidt

JOHN NUCKOLS — John Nuckols

PAUL M. BURNS — Paul M. Burns

FREDRICK R. HUNTER — Fredrick R. Hunter

6-12-78 CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK

66-121-12 H.I. 8/7/78

AGREEMENT

THIS CONTRACT made this 7th day of August, 1978, between the City of Fort Wayne, Indiana, an Indiana municipal corporation, by and through its Board of Public Works, (hereinafter BPW), and Bus Huts, Inc., an Indiana corporation, (hereinafter BHI).

1. CONSTRUCTION OF BUS STOP SHELTERS:

BHI shall design, provide plans and specifications for, and erect bus stop shelters at certain bus stop locations in the City of Fort Wayne, Indiana, with such locations being selected in the manner set forth hereinafter. The parties hereto contemplate and intend that approximately 150 or more bus stop shelters shall be erected. BHI will initially erect twenty-five (25) shelters and will only erect additional shelters with BPW's approval.

2. LOCATION OF BUS STOP SHELTERS:

BHI shall erect such bus stop shelters at those locations that are mutually agreed upon by both BHI and BPW. BHI shall regularly consult with the Public Transportation Corporation in choosing the most desirable locations. Prior to erecting any such shelters at any locations, BHI in conjunction with BPW shall secure any necessary approval and or zoning variance that may be required from any governmental entity, including the Fort Wayne City Plan Commission and/or the Fort Wayne Board of Zoning Appeals.

3. BUS STOP SHELTERS TO BE ERECTED ON PUBLIC RIGHT OF WAY AND/OR PRIVATE PROPERTY:

All bus stop shelters shall be erected on public right of ways along the street frontage. Notwithstanding the above, BHI may locate bus stop shelters on private property, provided, however, that BHI shall secure, at its own expense, written leases, authorizations, or grants of easement from the owners of such property, with such leases, authorizations, or grants of easement giving BHI the right to erect and maintain such bus stop shelter on the applicable parcel of real estate.

4. MAINTENANCE OF SHELTERS:

BHI agrees to make semi-weekly inspections of all such shelters, and BHI shall maintain all such bus stop shelters in good condition, including, but not limited to, making all necessary repairs, repainting, and shall replace, at its own expense, any advertising signs which have been destroyed. After receiving notice of any unsanitary condition, state of disrepair, defect, dangerous condition, or any unsightly condition existing in any

bus stop shelter, BHI agrees to forthwith repair, replace, or remove such shelter. If BHI substantially breaches this provision requiring the maintenance of bus stop shelters in good repair and condition, BPW shall have all remedies as are available for substantial breaches of contract, including any right to terminate the contract. BHI shall pay all electrical expenses and service costs incurred by the use of any electrical lighting in any bus stop shelter. BPW agrees to allow and grant to BHI access to and the right to connect up, or tap into, any electrical service which is now or hereafter being furnished to any public street light located in a close proximity to any bus stop shelter, provided, however, BHI agrees to reimburse the BPW for the reasonable costs of such electricity consumed in the operation or lighting of any such bus stop shelters.

5. CONTENTS OF ADVERTISEMENTS:

BHI shall have the full and exclusive right to secure commercial advertisements to be displayed in all bus stop shelters and to receive any monies in revenues derived therefrom. All advertisements secured by BHI shall conform to the standard codes of advertising, and BHI agrees to not display or erect any pornographic or immoral advertising.

6. PAYMENTS

BHI shall pay BPW a semi-annual percentage equal to five (5%) percent of the gross receipts of BHI during the preceding six month period derived from advertisements placed by BHI in or upon all bus stop shelters located on public right-of-ways. The term gross receipts as used herein is hereby defined to mean the receipts from gross rentals of all advertising placed in or upon all bus stop shelters, less any sales tax and related taxes, (excluding any state or federal corporate income tax), whether such sales of advertising be evidenced by check, credit, charge account, or other exchange. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when BHI shall receive payment therefor. Such sum shall be due and payable semi-annually on or before the 45th day after the applicable semi-annual six month period, with the first six months semi-annual period commencing six months after the date of the signing of this Agreement.

7. TERM OF CONTRACT:

The term of this Contract shall be for ten (10) years, commencing on September 1st, 1978, and terminating on August 31st, 1988, unless renewed as hereinafter set forth. BHI shall have the option to extend and renew this Agreement, on the same terms and conditions set forth herein, for one (1) additional period of ten (10) years, to commence on , 1988, and to end on , 1998. Upon termination of this Contract, BHI may remove any and all bus stop shelters, and BHI shall remove any such bus stop shelters that BPW has in writing requested the removal thereof within 30 days.

8. MAINTENANCE OF BOOKS:

For the purpose of ascertaining the amount payable as provided above, BHI shall keep at its premises accurate accounts of all gross advertising receipts, with these accounts to be entered in a book of permanent nature. BPW shall have the right at all reasonable times to examine the books and records of BHI for the purpose of determining the gross receipts.

9. PUBLIC LIABILITY INSURANCE:

BHI shall, for and during the period of the erection of the bus stop shelters, and the period for which the same are to be maintained and kept in repair by BHI, hold the City of Fort Wayne harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said BHI, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage. BHI shall, at all times, during the terms of this Agreement, carry and maintain in full force and effect public liability insurance in the amount of $500,000.00 covering such bus stop shelters. This policy procurred by BHI shall name the BPW and the City of Fort Wayne as an additional insured. A copy of all such current policy or policies shall be delivered to BPW.

10. COOPERATION WITH PUBLIC TRANSPORTATION CORPORATION:

BHI agrees that in performing all obligations imposed upon it hereunder, including by way of example and not limitation, the selection of any proposed location for the placement of a bus stop shelter and the maintenance of any bus stop shelter, to fully cooperate with the Public Transportation Corporation.

11. If a majority of the homeowners living wholly within a distance of 400 feet in every direction from any such shelter sign a written petition requesting the removal of such shelter, BHI shall remove such shelter forthwith upon receipt of a written request by BPW.

12. DEFAULTS:

If either BHI or BPW fails, neglects or refuses to perform any of its covenants, terms and conditions when and as required under this contract, or if BHI fails, neglects or refuses to make any payment under this contract when due, each party shall have such remedies as are available at law or in equity. BHI shall have fifteen (15) days from the posting of any such notice to correct any default in the payment of any monies agreed to be paid under this contract, and upon failure to correct and cure such default in the payment of monies, BPW shall have the right to terminate this contract.

BUS HUTS, INC.

By: Terrance R. Feichter
Terrance R. Feichter
President

ATTEST:

By: Judith K. Feichter
Judith K. Feichter
Secretary

APPROVED:

Robert E. Armstrong

ROBERT ARMSTRONG, MAYOR
CITY OF FORT WAYNE, INDIANA

CITY OF FORT WAYNE, INDIANA
BOARD OF PUBLIC WORKS

By: Henry P. Wehrenberg
Henry P. Wehrenberg

Ethel N. LaMar

Mary G. Scott

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

4111

TITLE OF ORDINANCE SPECIAL ORDINANCE - AMENDING AGREEMENT OF BUS HUTS, INC.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-78-08-30

SYNOPSIS OF ORDINANCE AMENDING COPY OF AGREEMENT WITH BUS HUTS, INC., WHICH WAS INTRODUCED IN COUNCIL AUGUST 8, 1978 UNDER BILL NUMBER S-78-08-04, I.E., PAGE TWO OF SAID AGREEMENT, ITEM NUMBER 6, ENTITLED "PAYMENTS," FIRST SENTENCE OF SAID PARAGRAPH TO INCLUDE "LOCATED ON PUBLIC RIGHT-OF-WAY" IMMEDIATELY FOLLOWING WORD SHELTERS AT END OF SENTENCE. (SEE ATTACHED AGREEMENT, PAGE TWO UNDERLINING WORDS TO BE ADDED TO AGREEMENT)

EFFECT OF PASSAGE CORRECTION OF FIRST SENTENCE OF PARAGRAPH ENTITLED "PAYMENTS" TO INCLUDE "LOCATED ON PUBLIC RIGHT-OF-WAYS" WHICH WAS INADVERTENTLY OMITTED IN RECOMPOSING SAID AGREEMENT.

EFFECT OF NON-PASSAGE PROPER STIPULATION OF LOCATION OF BUS HUTS IN RIGHT-OF-WAYS AS AGREED TO WITH CITY OF FORT WAYNE AND BUS HUTS, INC.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS)

ASSIGNED TO COMMITTEE

EP